

76 (Pages 618 to 621)

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| <p style="text-align: right;">618</p> <p>1 information from the class counsel, have</p> <p>2 you?</p> <p>3 A. I have asked for a lot of information, and</p> <p>4 I can't recall whether I have asked for</p> <p>5 the patterns of contracts for named</p> <p>6 plaintiffs over time.</p> <p>7 Q. Is there anything that has prevented a</p> <p>8 third-party payer in the course of</p> <p>9 negotiating with a PBM to say, "I want</p> <p>10 complete transparency for rebates and</p> <p>11 administrative fees you get from a</p> <p>12 manufacturer"?</p> <p>13 MR. SOBOL: Objection to the</p> <p>14 form.</p> <p>15 A. There is no doubt nothing that would</p> <p>16 prevent anyone from asking for anything in</p> <p>17 a negotiation, from a trip to Vegas to a</p> <p>18 week on the Ile St. Louis in Paris. And</p> <p>19 what --</p> <p>20 Q. Do you think that is the kind of</p> <p>21 information -- let's put Paris aside for</p> <p>22 the moment -- but do you think that</p> | <p style="text-align: right;">620</p> <p>1 they have been able to get this and been</p> <p>2 able to drive down these -- the price --</p> <p>3 the reimbursement rates toward the cost in</p> <p>4 the corroborative spread analysis that I</p> <p>5 have put together to date.</p> <p>6 Q. Is there anything that prevents a</p> <p>7 third-party payer in the course of</p> <p>8 negotiating with a PBM to say, "I want to</p> <p>9 see your volume of purchases of these</p> <p>10 drugs and the dollar rebates and</p> <p>11 administrative fees that you have received</p> <p>12 because I want to do my own calculation"?</p> <p>13 MR. SOBOL: Objection. You can</p> <p>14 answer.</p> <p>15 A. The bargaining positions of third-party</p> <p>16 payers would certainly be conditioned on</p> <p>17 the expectations of what was possible and</p> <p>18 what the range of costs might be, and so</p> <p>19 what someone would ask for would be</p> <p>20 conditioned on how badly they thought they</p> <p>21 were being gored.</p> <p>22 Now let's take into context just</p> |
| <p style="text-align: right;">619</p> <p>1 information about what a PBM's costs were</p> <p>2 is something that an inquisitive buyer</p> <p>3 would want to know?</p> <p>4 A. I would think that a client, a perspective</p> <p>5 client, submitting an RFP would ask for</p> <p>6 proposals in that RFP that would delineate</p> <p>7 what each PBM was willing to offer along</p> <p>8 the lines of what we see in the proforma</p> <p>9 contracts.</p> <p>10 Q. But --</p> <p>11 A. And they would say, "I want all the</p> <p>12 information. Give me the information."</p> <p>13 And all the contracts I'm seeing</p> <p>14 look very similar: AWP less a certain</p> <p>15 percent.</p> <p>16 And so they could be screaming</p> <p>17 for transparency, and the PBMs could be</p> <p>18 saying, "This is transparent. What are</p> <p>19 you talking about?"</p> <p>20 And there has been -- I am sure</p> <p>21 these clients have been demanding that,</p> <p>22 but there is obviously no evidence that</p> | <p style="text-align: right;">621</p> <p>1 what you are saying. I don't see articles</p> <p>2 in the Drug Cost Management Reports in the</p> <p>3 mid '90s saying we want to know your</p> <p>4 costs. We're -- we're forming our own</p> <p>5 PBMs. The price -- we are not getting</p> <p>6 advantage of these, you are not sharing</p> <p>7 the rebates that you have negotiated with</p> <p>8 us.</p> <p>9 I am seeing that now, and so</p> <p>10 there is nothing stopping them except the</p> <p>11 understanding of how badly they have been</p> <p>12 gored, and now I see that there is an</p> <p>13 understanding, and I see the behavior of</p> <p>14 exactly what you are asking for.</p> <p>15 (Mr. Stempel exiting the</p> <p>16 deposition room at 5:14 p.m.)</p> <p>17 Q. In connection with preparing your report,</p> <p>18 what steps have you taken to determine the</p> <p>19 extent to which PBMs compete against one</p> <p>20 another for third-party payer business?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 A. I have read the materials. I have looked</p> |

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| <p style="text-align: right;">622</p> <p>1 at -- I have been studying this market in</p> <p>2 connection with the litigation for the</p> <p>3 past seven to ten years. I have discussed</p> <p>4 these issues with colleagues at the</p> <p>5 Harvard School of Public Health where</p> <p>6 issues of competition of this sort and how</p> <p>7 it works in the market is common. And my</p> <p>8 opinions are based on the sum of that,</p> <p>9 those analyses, that understanding, that</p> <p>10 work.</p> <p>11 Q. What steps have you taken to determine the</p> <p>12 extent to which doctors compete against</p> <p>13 one another for third-party payer</p> <p>14 business?</p> <p>15 A. That doctors compete for third-party payer</p> <p>16 business?</p> <p>17 Q. Sure.</p> <p>18 A. None to date.</p> <p>19 Q. To what extent have you looked at the</p> <p>20 extent --</p> <p>21 MR. CAVANAUGH: Strike that.</p> <p>22 Q. Have you looked at the extent to which</p> | <p style="text-align: right;">624</p> <p>1 reimbursement rates to retail pharmacies?</p> <p>2 A. I have seen no evidence that it has</p> <p>3 allowed third-party payers to drive down</p> <p>4 reimbursement rates.</p> <p>5 Q. And what have you looked at to arrive at</p> <p>6 that conclusion?</p> <p>7 A. The materials that I have -- that I have</p> <p>8 already cited to you.</p> <p>9 Q. I just wanted to make sure we are all</p> <p>10 using the same definitions. You have used</p> <p>11 the term "single source" and "multisource"</p> <p>12 today. Am I correct that when you use the</p> <p>13 term "single source" you are referring to</p> <p>14 a patented branded drug which nonetheless</p> <p>15 faces therapeutic competition?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 A. May or may not.</p> <p>18 MR. SOBOL: Objection.</p> <p>19 A. That is correct.</p> <p>20 MR. SOBOL: Objection to the</p> <p>21 form.</p> <p>22 Q. And when you say "may or may not," it is</p> |
| <p style="text-align: right;">623</p> <p>1 retail pharmacies compete against one</p> <p>2 another for third-party payer business?</p> <p>3 A. I have attempted to, and the information</p> <p>4 that I find is -- is anecdotal and quite</p> <p>5 limited.</p> <p>6 Q. Based on this anecdotal data, what</p> <p>7 conclusions, if any, have you drawn?</p> <p>8 A. I have drawn the conclusion that it is in</p> <p>9 the self-interest of certain retailers to</p> <p>10 ally themselves with certain PBMs, and</p> <p>11 that network formation has certain</p> <p>12 economies of scale and scope that reflect</p> <p>13 how those networks are ultimately formed</p> <p>14 and who is members of which networks.</p> <p>15 Q. And do retail chains and independent</p> <p>16 pharmacies compete to get within those</p> <p>17 networks?</p> <p>18 A. There is a desire to be a part of a</p> <p>19 network on the part of a retailer.</p> <p>20 Q. As a result of that desire to get within a</p> <p>21 network, has that allowed third-party</p> <p>22 payers and PBMs to drive down</p> | <p style="text-align: right;">625</p> <p>1 because that single-source patented drug</p> <p>2 may be in a therapeutic category in which</p> <p>3 it has no competitors or no</p> <p>4 therapeutically-competitive drugs or there</p> <p>5 may be any number of competitive drugs</p> <p>6 within that category? Correct?</p> <p>7 A. I'm taking it to mean -- I am looking at</p> <p>8 -- I am taking as single source that there</p> <p>9 are no -- that the competition that exists</p> <p>10 is -- is not generic, if it exists at all.</p> <p>11 Q. And when you use the term "multisource,"</p> <p>12 am I correct that what you are referring</p> <p>13 to are instances in which the same</p> <p>14 chemical compound is being sold by</p> <p>15 multiple companies?</p> <p>16 A. As I said, it is when they are</p> <p>17 bioequivalent -- when the competition is</p> <p>18 on bioequivalence rather than on</p> <p>19 therapeutic similarities.</p> <p>20 Q. You are aware, of course, of instances in</p> <p>21 which you have a patented drug that is --</p> <p>22 where that chemical compound is sold by</p> |

78 (Pages 626 to 628)

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| <p style="text-align: right;">626</p> <p>1 multiple -- by different companies; aren't</p> <p>2 you?</p> <p>3 A. I am.</p> <p>4 Q. And would that fall within your definition</p> <p>5 of multisource?</p> <p>6 A. Single source.</p> <p>7 Q. That is single source?</p> <p>8 A. If it is subject to different patents, but</p> <p>9 it is around the same formulation, like</p> <p>10 say the diltiazems, I am characterizing</p> <p>11 that as single source.</p> <p>12 Q. Even though those companies might compete</p> <p>13 against one another selling the same</p> <p>14 chemical compound?</p> <p>15 A. Well, if it is -- if it is the same</p> <p>16 chemical compound and if it is</p> <p>17 bioequivalent, I am treating it as</p> <p>18 multisource.</p> <p>19 MR. CAVANAUGH: Thank you.</p> <p>20 MR. SOBOL: Thank you very much,</p> <p>21 everybody.</p> <p>22 THE WITNESS: No direct?</p> | <p style="text-align: right;">628</p> <p>1 CERTIFICATE</p> <p>2 Commonwealth of Massachusetts</p> <p>3 Plymouth, ss.</p> <p>4 I, Judith McGovern Williams, a</p> <p>5 Registered Professional Reporter and</p> <p>6 Notary Public in and for the Commonwealth</p> <p>7 of Massachusetts, do hereby certify:</p> <p>8 That RAYMOND S. HARTMAN, Ph.D.,</p> <p>9 the witness whose deposition is</p> <p>10 hereinbefore set forth, was duly sworn by</p> <p>11 me and that such deposition is a true</p> <p>12 record of the testimony given by the said</p> <p>13 witness.</p> <p>14 IN WITNESS WHEREOF, I have</p> <p>15 hereunto set my hand this day of</p> <p>16 , 2004.</p> <p>17</p> <p>18 Judith McGovern Williams</p> <p>19 Registered Professional Reporter</p> <p>20 Certified Realtime Reporter</p> <p>21 Certified Shorthand Reporter No. 130993</p> <p>22 My Commission expires:</p> <p>April 2, 2010</p> |
| <p style="text-align: right;">627</p> <p>1 MR. SOBOL: Not now.</p> <p>2 (Whereupon, at 5:20 p.m., the</p> <p>3 deposition was adjourned.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> | |

| | | | | |
|------------------------|--------------|----------------------|-----------------------|------------------------|
| A | 360:20 | 527:13 529:6 | 348:16 | 562:4,5,13,17 |
| abilities 374:1 | 362:20 | 530:5 533:21 | 536:17 | 562:22 564:8 |
| 599:19 | 363:14 364:1 | 535:12 536:1 | according | 564:12 |
| ability 348:9 | 368:12 | 538:10,22 | 424:18 | 572:11,18 |
| 408:6 478:10 | 369:19 | 542:3 543:9 | 579:10 | 573:14,20 |
| 480:1 564:18 | 372:10,19 | 551:5 554:21 | accords 351:20 | 590:15 591:5 |
| 600:21 | 374:9 381:15 | 555:2,9,18 | account 358:5 | 595:18 601:3 |
| 615:12 | 381:16,17,19 | 556:19,20 | 359:7 387:15 | across 360:16 |
| able 339:8 | 381:20 | 557:3,4 | 462:20 505:3 | 384:19 |
| 342:15 351:1 | 382:16 385:4 | 558:12 560:7 | 587:6,9 | 427:10 |
| 376:3,8 | 390:9,20 | 572:10 576:3 | 600:17 | 430:20 |
| 379:2,19 | 391:20 | 581:17 | 608:10 | 502:18 521:2 |
| 380:5 391:11 | 395:17 | 582:19 | accounting | 544:21 600:7 |
| 392:21 394:5 | 396:10,16 | 585:14 586:3 | 462:21 463:2 | 601:4 |
| 395:22 415:8 | 402:5 403:20 | 590:1 591:5 | 463:3 | Act 416:12 |
| 445:11 | 409:14 411:9 | 592:11,14 | accuracy | 421:2 445:7 |
| 448:22 457:7 | 411:9 421:2 | 600:6 602:21 | 456:10,13 | actions 321:8 |
| 476:5 481:7 | 421:15 | 604:6 608:5 | accurate | 553:1 |
| 481:12,13 | 423:20 | 608:6,21 | 359:20 522:8 | activities |
| 485:10 490:3 | 429:16 | 611:19,21 | accurately | 414:19 |
| 493:3 496:2 | 431:12 | 619:1,19 | 614:4 | activity 406:10 |
| 499:13 | 447:15 | above 411:12 | achieved | 407:21 |
| 500:10 511:2 | 448:19 451:5 | 550:15 563:7 | 411:19 | 498:10,14 |
| 518:2 520:14 | 451:17 452:8 | absence 603:5 | acquire 376:3 | actual 345:22 |
| 521:4,7 | 453:16 456:3 | 604:7 | 376:8 379:3 | 349:21 |
| 566:22 | 457:3,10,15 | absent 367:17 | 379:20 380:5 | 350:14 365:6 |
| 575:11 | 462:19 | 368:10 375:2 | 383:19 | 369:15 375:6 |
| 583:14 | 464:12 | 383:9 432:14 | 564:10,10,11 | 380:17 381:5 |
| 596:19 | 466:13 | 502:15 | acquired | 385:12,12 |
| 597:19 | 468:17 | 603:11 | 427:21 | 386:13 410:5 |
| 612:16 616:6 | 472:14 | academic | 560:12 | 420:21 443:6 |
| 620:1,2 | 475:14 | 358:13 403:1 | acquirers | 475:11 |
| about 332:6 | 477:11 | 475:16 | 560:9,11 | 489:21 |
| 335:14 337:9 | 481:19 | 482:16 | acquisition | 491:22 492:9 |
| 338:21 339:3 | 485:19 486:8 | accept 428:19 | 360:16 365:7 | 493:18 |
| 339:22 340:4 | 488:7 490:15 | accepted | 383:2 401:12 | 503:19,20 |
| 340:10,12 | 491:1 495:1 | 427:10 | 408:18 | 504:4 510:18 |
| 342:18 | 496:13,14,15 | 430:20 | 420:21 421:4 | 511:3,14 |
| 344:13 | 497:4,15,16 | accident | 421:12 | 534:9 536:21 |
| 345:21 346:1 | 497:18,21 | 587:19 | 422:22 | 552:20 |
| 346:14 | 503:1,3,5 | accommodate | 424:12 | 556:10 |
| 348:11,11 | 505:16,18 | 563:21 | 497:20 498:1 | 557:13 582:6 |
| 350:3,4,17 | 506:7 511:19 | accommodat... | 499:5,21 | 582:11,12,14 |
| 359:22 360:2 | 512:1 516:3 | 357:7 359:16 | 552:20 560:4 | 583:5 592:6 |
| | 517:8 518:19 | accorded | 560:6,7,15,20 | 592:9 595:5 |

| | | | | |
|----------------------|------------------------|------------------------|---------------------|------------------------|
| 596:14 597:8 | 597:4 | 609:19 | 359:20 361:5 | 561:20 |
| 601:21 605:1 | administering | affected | 361:21 366:6 | 600:16 |
| actually | 542:8 | 341:17 | 436:9 474:17 | Ah-ha 481:2 |
| 332:15 | administrati... | 386:16 425:5 | 505:1 513:6 | aimed 338:18 |
| 344:11 | 437:18 513:2 | 433:17 | 526:22 527:3 | 338:20 |
| 381:18 | 517:5 520:11 | 444:21 501:7 | aggregating | al 329:22 489:3 |
| 472:15,16 | 550:5 553:21 | 501:10 502:4 | 342:12 | 570:7 |
| 475:11 | 554:11 | 502:6 | aggressive | Alan 329:21 |
| 484:19 | administrative | affecting 406:3 | 488:10 | 570:6,17 |
| 501:17 | 446:15 | 577:7 | aggressively | all 321:8 332:6 |
| 527:18 | 472:12,17 | affects 437:3 | 444:21 513:8 | 335:5 336:17 |
| 561:12 563:2 | 473:3,20 | 441:3 | ago 374:6 | 337:22 |
| 571:13 580:1 | 474:2,13,16 | affirmative | 554:22 | 342:14 |
| 590:3 604:9 | 475:22 | 527:6 | agree 380:22 | 349:22 351:6 |
| Adamistic | 618:11 | after 357:18 | 384:16 422:2 | 352:8,9,10,20 |
| 390:18 | 620:11 | 406:1 409:14 | 422:4,5 | 355:17 358:6 |
| Adamistically | admitted | 410:15 413:5 | 423:15,19 | 361:1,3 |
| 390:6 | 444:12 565:4 | 413:20 | 424:5 427:12 | 362:5 364:16 |
| adapt 359:7 | adopted | 415:12,16 | 429:21 | 364:19 |
| added 399:12 | 564:17 | 453:11 507:2 | 430:22 491:8 | 376:17 |
| addition | advance 543:4 | 561:7 572:1 | 492:18 493:8 | 377:19 378:3 |
| 332:15 354:1 | AdvancePCS | 578:17 | 540:21 | 385:14 386:4 |
| 460:10 | 327:18 | 615:16 | 578:13 | 386:19 387:4 |
| additional | 328:19 | afternoon | 606:17 | 395:3 414:18 |
| 326:15 | 330:18 | 455:19 | 607:20 609:9 | 417:4 423:21 |
| 416:10 459:3 | 398:17,21 | 528:20 | 617:21 | 426:5 429:7 |
| 462:18 | 401:12 | afterwards | agreed 404:9 | 431:1 432:9 |
| 583:12 | 427:21 | 399:13 | 458:7 476:6 | 435:19 436:1 |
| address 358:7 | 469:11 470:6 | again 358:11 | 563:4 | 436:1,11 |
| 360:1 362:11 | 471:16,19,20 | 378:16 | agreeing | 437:4,4,12,12 |
| 515:11 | 471:22 472:6 | 379:16 | 474:21 | 437:19 |
| addressed | 473:11,15 | 384:15 | agreement | 438:13,19 |
| 362:11 | advantage | 419:18 | 327:15,20 | 441:11 |
| 437:16 515:5 | 498:21 621:6 | 429:22 484:3 | 328:6,13 | 442:11,12 |
| 515:5 | advantages | 485:7 487:20 | 330:13,20 | 446:17 |
| adjourned | 495:12 | 499:3 510:6 | 331:5,14 | 449:12 451:3 |
| 627:3 | advisor 602:11 | 519:2 529:1 | 467:14 | 458:15 |
| adjustment | Advisory | 552:3 571:14 | 469:12 | 459:16,17 |
| 382:4 | 531:6 | against 446:12 | 471:15 | 461:21 462:5 |
| administered | Aetna 335:15 | 458:1 460:14 | 542:12 568:8 | 463:11,22 |
| 355:12 423:3 | 342:5 343:4 | 621:19 | agreements | 465:6,6,14 |
| 529:12 539:6 | 521:12 | 622:12 623:1 | 448:2 614:22 | 471:20 472:4 |
| 542:9 546:16 | Affairs 486:18 | 626:13 | ahead 422:19 | 473:11,15 |
| 559:2 581:1 | affect 495:14 | age 465:10 | 461:13 525:1 | 475:5 478:4 |
| 581:4,8,22 | 513:3 571:8 | aggregate | 525:3 557:8 | 478:21 |

| | | | | |
|--------------------|------------------------|-----------------------|-----------------|---------------|
| 482:18 486:7 | 568:11 | 507:1 516:15 | 522:20 | 478:16 488:2 |
| 487:12,13 | 583:10 | 517:4 518:4 | am 332:5 | 492:8 495:17 |
| 492:16 493:9 | 587:15 | allowed 623:21 | 336:12,16,17 | 496:6,6,10,11 |
| 501:15 | 597:11 607:2 | 624:3 | 342:22 | 496:12 |
| 504:20 505:2 | 607:15 | allowing 400:9 | 343:10,12,14 | 498:19,19 |
| 505:19 516:1 | alleged 366:12 | 495:18 | 345:4 346:16 | 500:6,12,13 |
| 516:2 521:2 | 367:15,18 | allows 495:12 | 346:21 347:8 | 507:15 510:8 |
| 521:22,22 | 375:2 406:2 | 600:5,7 | 347:9,10,11 | 510:20 |
| 522:10 525:6 | 409:22 410:2 | ally 623:10 | 349:19,20 | 512:14 514:7 |
| 526:10 530:9 | 414:18 | almost 397:16 | 350:19 | 514:18 516:1 |
| 543:3 551:13 | 417:13 | 457:13 | 351:19 | 516:7,12 |
| 552:3 554:22 | 428:11,12 | alone 431:16 | 354:16 | 523:17 |
| 560:2 562:18 | 432:11,15 | along 348:21 | 355:21 | 524:12 |
| 568:1 575:21 | 433:16 | 577:20 619:7 | 356:13 | 527:14,21 |
| 577:3,6,7,17 | 436:11 442:5 | already 335:10 | 357:14,15,17 | 530:18 |
| 578:8,17 | 475:4 480:22 | 352:14 353:3 | 358:17 | 531:13 542:2 |
| 581:11 584:5 | 489:18 501:8 | 371:21 372:3 | 359:11,13 | 542:16,18 |
| 585:20 | 501:10,16,19 | 453:6 493:13 | 361:3 363:17 | 547:9 548:11 |
| 592:10 593:1 | 502:5,7,12,14 | 590:11 624:8 | 364:11,11,15 | 549:14 555:5 |
| 601:6 605:18 | 550:21 556:7 | also 326:12 | 372:22 373:3 | 555:21 557:1 |
| 606:14 | 588:3 596:8 | 332:17 | 378:8,11,14 | 558:21 |
| 608:16 614:5 | 603:6,11,17 | 344:21 354:4 | 379:13 | 559:12 |
| 619:11,13 | 604:8 | 381:12 395:9 | 381:17,19 | 560:17,19 |
| 624:9 625:10 | allegedly | 396:13 | 382:10,11 | 561:16 |
| allegation | 409:11,18 | 404:10 | 386:2,13,18 | 562:15 |
| 372:16 388:6 | 603:20 | 431:19 437:7 | 386:22 | 565:18,21 |
| 439:5 479:2 | allocable | 440:4 447:15 | 387:15 389:6 | 571:1 574:20 |
| 564:21 596:8 | 462:12,12 | 451:6 472:13 | 389:6,7 | 579:19 581:5 |
| 603:17 615:3 | allocate 463:16 | 474:15 484:1 | 390:10,16 | 581:5,6,6 |
| allegations | allocates 464:2 | 484:15 | 393:9 399:5 | 582:21,21 |
| 346:3 391:19 | allocating | 488:12 | 407:1 408:5 | 583:4,6,9,13 |
| 405:6,8 | 527:2 | 517:17 518:3 | 413:12 417:4 | 583:19 |
| 414:11 431:9 | allocation | 537:5 543:9 | 418:20,20 | 584:14,17 |
| 433:13 | 362:7 513:7 | 563:18 568:8 | 419:2,17 | 586:14 |
| 435:15 | 515:11 | 581:1 582:4 | 421:22 | 587:21 |
| 436:16,19,21 | 520:17 | alternative | 426:12 | 588:10,16 |
| 440:20 | 521:17 524:1 | 562:6,11 | 429:15 430:1 | 589:3,7,9,9 |
| 441:13,15 | allocations | alternatively | 432:12 | 592:11,16 |
| 446:17 | 528:1 | 424:22 | 436:18 441:5 | 593:5,6 |
| 458:18 478:6 | allow 335:17 | 499:18 | 449:7,12,12 | 594:8 596:21 |
| 481:11,17 | 359:17 436:8 | alternatives | 449:16,21 | 597:16 |
| 505:19 | 475:8 494:17 | 562:14 | 455:2 457:1 | 598:18 603:3 |
| 514:14 | 495:13,14 | although | 457:2,16 | 606:7,14 |
| 527:12 530:6 | 497:10 | 543:18 | 460:7 466:3 | 611:2,13,14 |
| 530:8 568:3 | allowable | always 432:12 | 468:16 | 611:15 612:2 |

| | | | | |
|---------------------|-----------------------|------------------------|------------------------|-----------------------|
| 614:2 619:20 | 437:17,22 | 382:22 387:9 | 402:6 | 495:18 505:7 |
| 621:9 624:12 | 439:15 | 409:21 412:9 | antihyperten... | 505:13 |
| 625:7,8,12 | 486:11 488:1 | 415:19 | 604:16 | 507:20 519:4 |
| 626:3,10,17 | 495:4 515:9 | 419:16 423:4 | antithetical | 528:9,15 |
| Amended | 520:20 | 423:14 427:1 | 358:22 | 534:8 536:10 |
| 614:7 | 521:15,17 | 427:8 433:12 | antitrust 527:8 | 537:7,14 |
| Americas | 524:2,6 | 447:15 449:6 | 602:22 603:6 | 538:9 539:13 |
| 325:5 | 535:8 538:15 | 456:9 469:1 | 603:18 604:8 | 540:12 543:4 |
| Amgen 324:16 | 593:11 | 489:8 492:4 | 606:6 | 544:6,7 |
| among 337:16 | 610:15 | 492:7 496:5 | any 332:12 | 549:5 552:9 |
| 401:10 432:8 | 617:17,19 | 506:19 | 333:2,5,8,18 | 556:18 |
| 479:21 | 620:4 | 514:20 | 333:22 334:3 | 562:14 |
| 480:21 | analyze 401:5 | 517:13 | 334:6,19 | 590:16,18 |
| 482:11 483:6 | analyzing | 519:18 | 337:14,15,20 | 591:2 595:10 |
| 543:3 550:11 | 337:18 | 524:17,20 | 338:10 | 608:6 609:4 |
| 551:15 | 399:16 | 544:11 | 339:15 | 609:16 610:2 |
| 580:19 | 604:13 | 554:19 | 342:16 | 613:12,12 |
| amount 378:7 | and/or 454:3 | 556:22 557:1 | 347:18 | 614:20,22 |
| 386:21 | anecdotal | 558:15 | 349:14 | 615:14 623:7 |
| 419:12 423:9 | 540:17 623:4 | 561:11,13 | 353:18 | 625:5 |
| 458:16 | 623:6 | 563:15 | 358:11,12 | anybody |
| 461:19 462:7 | announced | 571:16,18,19 | 359:10 365:6 | 357:14 |
| 462:10 470:8 | 369:14 | 573:9 575:15 | 365:9 370:2 | 445:10 492:2 |
| 516:14 523:5 | another 332:18 | 575:22 608:4 | 370:13 | 591:4 592:8 |
| 535:18 565:2 | 341:12 | 612:15 | 371:13 372:1 | anyhow 525:2 |
| 577:10,16 | 379:14 | 615:21 617:5 | 372:17 391:3 | anyone 359:6 |
| 578:16 | 404:20 | 620:14 | 399:14 | 592:18 |
| amounts | 472:13 | answered | 408:20 | 618:16 |
| 392:18 | 479:16 | 351:18 | 412:11 | anything 332:9 |
| 400:21 | 493:17 533:2 | 378:20 379:7 | 417:10 | 362:20 |
| 462:11 463:2 | 598:21 | 380:2,3,9 | 419:11 | 369:20 424:5 |
| 472:15 526:8 | 621:20 | 381:2,3 | 422:21 423:9 | 426:4 432:19 |
| AMP 449:3 | 622:13 623:2 | 409:4 413:8 | 424:1 426:20 | 536:1 538:22 |
| AMPs 614:11 | 626:13 | 501:12 | 431:17 | 567:14 598:3 |
| amused 516:1 | answer 331:22 | 573:12 | 432:21 | 599:13 618:7 |
| analyses | 341:11 343:7 | answering | 433:20 437:9 | 618:16 620:6 |
| 394:22 622:9 | 350:22 351:1 | 525:5 570:15 | 439:14 | anyway 602:7 |
| analysis | 358:9 361:18 | answers 349:4 | 440:16,17 | 602:9 |
| 337:15 353:2 | 365:1,8,21 | 351:10 | 455:5 460:3 | apparent |
| 353:3 354:11 | 367:6,8 | anti 400:11 | 464:14 | 359:5 |
| 357:8 359:4 | 368:15 | anticipate | 469:21 | apparently |
| 388:9 391:8 | 370:19 371:1 | 356:11 401:9 | 471:21 | 403:10 |
| 397:5 399:21 | 373:10 | anticipated | 480:22 | appeals 402:20 |
| 410:10 | 378:12,18 | 343:22 | 486:11 | appear 403:4 |
| 416:10 | 379:9 382:1 | anticompetit... | 489:17 | 581:18 |

| | | | | |
|--------------------------------------|----------------------------------|---------------------|------------------|----------------------|
| appearance 534:15 | 595:5 599:15 | 350:4 364:20 | 352:7 353:17 | 459:13,21 |
| APPEARAN... | armed 617:8 | 367:7 378:8 | 390:10 419:2 | 460:1,4,11,22 |
| 322:1 323:1 | Armstrong 324:11 | 378:14,17 | 434:4 449:12 | 461:5,8 |
| 324:1 325:1 | arm's 496:8 | 490:15 514:6 | 449:14,16 | 464:21 |
| 326:1 | around 356:5 | 574:3 619:5 | 503:19 520:8 | 490:10 491:3 |
| appeared 463:3 534:20 | 357:1 411:2 | asked 351:17 | 526:17 | 496:1 500:15 |
| 535:17 | 428:1 568:21 | 361:19 362:5 | 542:16,18 | 501:14 |
| 541:19 | 577:15 626:9 | 362:11 | 556:22 557:1 | 503:21 504:2 |
| appearing 549:13 | ARPS 324:10 | 378:20 379:6 | 557:4 558:12 | 504:2 513:11 |
| appears 454:7 | arrangement 605:19,20 | 380:1,3,8 | 592:16 | 513:12 |
| 456:3,17 | arrangements 605:9 | 381:1,3 | 605:16 | 514:12 515:3 |
| 476:22 477:1 | array 596:7 | 383:15 388:6 | 608:20 616:3 | 521:7 551:21 |
| appendices 614:6 | arrive 624:5 | 388:16 | 617:20 | 552:2,19 |
| applicable 454:4 | article 395:10 | 391:10 405:6 | 618:16 | 553:10 |
| apply 373:11 | 395:13 | 407:19 409:3 | 621:14 | 559:20 563:6 |
| 373:16 | 404:20 451:5 | 413:7 414:1 | ASP 342:2 | 563:7,9 |
| approach 458:17 | 451:7 483:12 | 414:3,8 | 343:21 | 564:2,4 |
| appropriate 342:1 528:1 | 485:14 | 415:14 424:6 | 348:14 | 565:13 567:9 |
| 545:10 | 486:16,17 | 432:11 434:2 | 357:22 | 568:19 569:7 |
| 593:17 | 593:12,14 | 436:12,20 | 362:15 363:5 | 574:19 575:2 |
| appropriately 361:9 526:1 | articles 338:16 | 438:20 | 363:13,14,20 | 576:4 577:4 |
| approximately 553:18 554:7 | 477:10 | 439:10 442:3 | 366:11 | 577:6,7,9,16 |
| April 628:22 | 485:18 | 458:10 | 367:17,22 | 578:8,16 |
| area 397:7 | 486:10 | 472:19 | 368:12 369:9 | 579:18 588:7 |
| 481:21 482:5 | 488:21 621:1 | 494:14 | 370:3 371:14 | 588:12,13 |
| aren't 626:1 | articulated 544:4 | 501:11 | 372:9 373:6 | 589:1 590:6 |
| argue 589:10 | articulating 376:15 | 514:13 | 374:14 375:9 | 590:14 |
| argument 568:21 | artifact 586:13 | 525:18,19 | 378:2,3 | 591:20 |
| arisen 529:1 | artificially 435:17,19 | 527:11,18 | 381:4,8 | 592:21 |
| arithmetic 585:10,11,15 | 436:3 | 533:17 537:1 | 382:15 | aspect 332:12 |
| 586:5 587:19 | ascertain 429:2 434:16 | 537:2,11 | 383:10 384:2 | 337:17 |
| 588:5 589:16 | 457:5 476:6 | 539:14 | 386:6 389:16 | 484:14 488:3 |
| 589:18 592:5 | 517:18 538:6 | 548:18 | 419:14 | 541:18 |
| 592:8,13 | 582:10 | 556:16,20 | 420:15,15,17 | aspects 362:6 |
| | 616:13 | 558:16 568:2 | 420:21 421:5 | 400:8 539:12 |
| | aside 618:21 | 573:11 | 421:5,8,18 | ASPs 392:7 |
| | ask 341:12 | 582:19 | 422:15,17 | 454:13 |
| | 343:18 348:9 | 583:15 | 423:11 425:2 | 464:16,18 |
| | | 600:16 | 427:6 431:9 | 465:4,6 |
| | | 613:17 | 431:13,16 | 478:8 489:17 |
| | | 615:13 | 432:17 446:4 | 521:22 565:8 |
| | | 617:22 618:3 | 449:3 450:12 | 611:21 |
| | | 618:4 | 455:1 457:3 | 614:10 |
| | | asking 336:3 | 458:12,13,16 | assent 396:12 |
| | | | 458:20 | assess 349:13 |

Raymond S. Hartman, Ph.D. Confidential - Attorneys' Eyes Only

October 8, 2004

Volume II

Boston, MA

6

| | | | | |
|------------------------|-----------------------|-----------------------|-----------------------|---------------|
| 400:3 414:10 | 442:5 585:17 | 480:15 | 511:13 | 372:12 373:6 |
| 519:8 537:5 | 586:3 | audited 476:5 | 512:14 560:6 | 373:17 374:3 |
| assesses 399:20 | Astra 323:18 | audits 477:17 | 560:7,10,12 | 374:15,16,22 |
| assisting 527:2 | AstraZenco | 477:18 | 560:14,15,19 | 375:4,5,9,10 |
| 606:9 | 507:21 | August 329:9 | 560:20 561:1 | 375:14 |
| Associates | attached | 329:14 | 562:5,6,17,19 | 376:20 377:2 |
| 329:9 531:7 | 328:12 | 546:17,20 | 567:1 573:14 | 377:4,9,10,13 |
| 546:16,20 | 331:13 | 547:21 548:6 | 573:18 | 377:15,20 |
| associations | attachment | 554:3 | 593:10,15,22 | 378:1,4 |
| 428:6,10 | 340:22 361:8 | authored | 594:2 601:14 | 382:15 383:4 |
| assume 351:1 | 361:22 | 593:13 | 609:9 610:2 | 383:6,6,11 |
| 351:4 388:7 | 443:19 | authoritative | 610:12,17,19 | 389:15 |
| 405:6 413:10 | 483:18 | 338:10 | 610:20 611:2 | 405:11 |
| 414:3 415:14 | 484:19,20 | 417:10 | 611:5 612:5 | 406:19 412:8 |
| 417:19 | 485:8 487:19 | 564:15 | 612:18,22 | 414:20 |
| 432:12,15 | 512:16 | authorities | averaged | 419:14 |
| 434:2 436:12 | 518:11,12 | 399:22 | 560:8 | 420:16 |
| 436:20 437:1 | 530:15 551:4 | authority | averages | 421:13,13 |
| 438:20 | 593:9 596:15 | 464:14 | 359:19 361:4 | 422:16 |
| 439:10 | attempt 391:4 | available | 361:9 385:19 | 423:12 |
| 505:11 | 485:22 | 332:17 | 611:3 | 424:12 425:1 |
| 525:12,19 | 613:12 | 392:20 | averring | 426:22 |
| 526:4 527:11 | attempted | 396:15 417:6 | 382:12 | 427:11 |
| 527:12 530:7 | 339:16 | 447:18 | avoid 540:22 | 430:10,21 |
| 541:5,12 | 340:14 446:8 | 496:16 507:3 | aware 369:19 | 431:1,4,8,16 |
| 556:10 | 623:3 | 512:21 | 369:20 424:8 | 432:14,16 |
| 557:12 | attempting | 552:13 | 446:21 | 433:14,17 |
| 583:22 | 343:5 450:20 | Aventis 324:22 | 486:15 488:2 | 434:1 435:18 |
| 589:22 590:3 | attention | Avenue 322:14 | 615:3 625:20 | 435:19 436:5 |
| 590:4 | 418:15 | 323:5,14 | awfully 548:12 | 436:11,22 |
| assumed 567:4 | 443:22 452:9 | 325:5,14 | AWP 334:15 | 437:3,5 |
| 569:4,15 | 516:9 592:22 | 326:5 | 343:20 | 438:21,22 |
| 601:16 | attorney 572:9 | average 321:4 | 345:20 356:3 | 439:3,12 |
| assumes | attributes | 358:4 360:8 | 357:22 | 441:2,3,4 |
| 613:15 | 342:7 494:8 | 360:14,21,21 | 362:14,19 | 445:17,21 |
| assuming | 494:19,21 | 361:4,15 | 363:2,12,15 | 446:2,2 |
| 341:9 421:14 | attributing | 364:22 373:5 | 363:18 | 447:5 450:12 |
| 421:16,19 | 600:12 | 373:11,14 | 366:11,12,15 | 453:14 |
| 436:15,18 | attuned 442:11 | 385:20,21 | 366:16,17,18 | 454:18,20 |
| 439:8 539:17 | audible 573:10 | 387:3 393:17 | 366:21 367:2 | 455:1 457:4 |
| 565:19 | audience | 393:19 | 367:15,18,20 | 458:12,19 |
| assumption | 589:14 | 411:17 | 368:3,8,9,12 | 459:14 |
| 412:12 | audit 392:13 | 430:16 431:5 | 368:19 369:8 | 475:10 |
| 436:16 | 476:8,11,19 | 460:4 461:17 | 369:14 370:2 | 480:22 |
| 439:22 442:3 | 477:15 | 510:16 | 371:13 372:9 | 481:15 |

| | | | | |
|---------------|----------------------|-----------------------|-----------------------|--------------------|
| 490:10 491:2 | 571:7 572:12 | 422:15 447:7 | 609:5,11 | 453:5 479:11 |
| 496:16,17,22 | 574:18 575:1 | 447:9 448:18 | 610:4 620:15 | 484:8 497:12 |
| 497:22 | 575:5 577:11 | 449:21 450:5 | Barron 451:6 | 529:22 |
| 500:11,17 | 579:7,12,18 | 450:7 451:21 | Barron's | 561:16 |
| 501:6,8,14 | 580:2 582:13 | 472:1 503:7 | 395:10,13 | 568:10 |
| 502:15,18,19 | 584:12,16 | 504:4 532:7 | base 349:7 | 597:10 |
| 503:8,10,13 | 585:4,6,16,21 | 559:2,3 | 529:21 530:5 | Bates 453:8 |
| 503:15,21 | 586:7,9,21 | 561:18 562:1 | 540:21 | 466:5 467:15 |
| 504:1,11,22 | 587:15 588:3 | 562:2,18 | based 352:13 | 469:22 |
| 508:2,6,12,19 | 588:6,11,12 | 567:8 571:10 | 362:2 372:22 | 471:11 501:1 |
| 508:21 509:6 | 588:17,18 | back 346:14,16 | 375:7 387:10 | 510:8 515:17 |
| 509:10,13,21 | 589:1,13,21 | 370:21 371:6 | 424:14 | 516:10 |
| 510:1,15,22 | 590:6,15 | 371:7 378:9 | 434:14 | bathroom |
| 511:8,12 | 591:6,20 | 378:15,21 | 436:15 440:2 | 514:3 |
| 512:6,11,17 | 592:10,20 | 379:13,17 | 462:14 | be 332:16 |
| 517:9,18 | 593:18,22 | 384:21 | 470:20 478:6 | 336:1,6,19 |
| 518:1 519:1 | 594:8,15 | 410:18 452:2 | 508:1 513:17 | 337:16 |
| 519:3,5,10,11 | 595:17,21 | 465:16 467:9 | 519:5 521:3 | 342:15 343:5 |
| 519:14 520:2 | 596:6,7 | 497:13 532:9 | 527:8 531:4 | 353:5 356:12 |
| 520:3 521:5 | 601:2 609:21 | 557:7,9,10 | 555:7 569:6 | 357:5,6,7,8 |
| 521:6 524:14 | 616:20 | 561:10,14 | 582:6 605:1 | 359:3,15 |
| 525:10,20 | 619:14 | 569:1 593:7 | 622:8 623:6 | 360:3,4,6 |
| 526:9 528:10 | AWPs 342:1 | 607:14 | baseline 517:3 | 361:6 362:6 |
| 528:16 | 368:11 375:7 | 614:16 | 517:15 519:7 | 362:9,10 |
| 530:11 531:4 | 386:11 388:7 | BACON | 528:17 | 367:5,8,18 |
| 535:9 537:6 | 388:17,18 | 324:18 | bases 509:4 | 368:14 |
| 540:2,22 | 412:21 439:5 | bad 561:6 | basic 435:12 | 370:22 372:8 |
| 541:17,20 | 439:8,15,21 | badly 374:4 | basically | 373:7,8 |
| 542:11 | 441:20,22 | 552:18 | 354:14 | 375:15 |
| 543:17 | 489:16 | 616:13 | basing 349:21 | 376:14 377:6 |
| 544:15 | 528:12,15 | 620:20 | 397:13,20 | 380:4 381:6 |
| 545:14 546:3 | 584:1 614:1 | 621:11 | 408:1,5 | 381:8,12 |
| 549:11 | 614:5 615:4 | balance 609:11 | basis 350:6,7 | 382:6,9,10 |
| 550:13 | AWP/ASP | 610:4 | 380:12 | 383:13,19 |
| 551:12,17,22 | 589:4 | Bank 517:19 | 393:14 394:1 | 389:17 |
| 552:2,19 | AWP/WAC | 517:20 | 419:14,15 | 391:17 |
| 553:6,10 | 591:10 | Bank's 517:15 | 420:14,15,16 | 395:22 |
| 558:18 | a.m 321:21 | Bank/Medis... | 420:16,17 | 396:11 398:6 |
| 559:19,21 | 357:12 | 517:2 | 421:8 422:14 | 398:6,7 |
| 562:10,11 | 388:22 389:1 | bargainers | 422:16,16 | 399:22 400:4 |
| 563:9,11 | | 597:15,17,17 | 423:12,12 | 400:7,11,19 |
| 564:5,11 | B | bargaining | 424:1 433:12 | 400:20 |
| 567:2,3,8 | B 327:8 328:1 | 491:20 600:6 | 439:1,20 | 403:13,17,17 |
| 568:18 569:2 | 329:1 355:11 | 601:16 602:2 | 443:14,18 | 406:19 410:4 |
| 569:7,10 | 420:15,17 | 608:1,12,18 | 452:22 453:1 | 410:8,9 |

Raymond S. Hartman, Ph.D. Confidential - Attorneys' Eyes Only
Volume II Boston, MA

October 8, 2004

8

| | | | | |
|---------------|--------------|-----------------------|----------------------|--------------|
| 415:7,7,16 | 497:1,18 | 583:15,19,20 | 447:22 | 391:11 394:5 |
| 416:2,9,10,11 | 499:8 500:2 | 584:5 585:17 | 448:14 476:4 | 394:5 395:6 |
| 417:8 420:5 | 500:10 | 587:11 | 490:18 | 399:12 403:2 |
| 420:12 427:7 | 502:16 | 588:11,12 | 499:12 | 403:22 404:1 |
| 429:7 430:14 | 503:18 | 590:16 591:1 | 508:11 534:5 | 404:9 405:6 |
| 430:17 431:7 | 504:12,17 | 591:2,8 | 544:20 | 406:7 408:14 |
| 431:7,8,8 | 505:12 | 595:17 597:6 | 548:11 | 409:8 411:21 |
| 432:13,17 | 508:10 509:5 | 597:22 | 559:20 561:4 | 412:11 413:9 |
| 433:3 434:7 | 510:11 511:2 | 599:16,16,17 | 595:8 598:1 | 414:1,3,3,8 |
| 434:8,18,21 | 511:6,9 | 599:18,20,22 | 598:2 599:3 | 414:14 |
| 436:2 437:6 | 513:19,21,21 | 601:11,18 | 609:2 611:13 | 415:14 |
| 437:15,16 | 515:10 | 602:3,7,15 | 611:14 | 421:11 422:9 |
| 438:13,14,17 | 516:22 519:2 | 605:14 | 616:15 | 431:14,17 |
| 438:19 | 519:9 520:14 | 609:20 610:3 | 620:12 625:1 | 432:11,11,15 |
| 442:12,15 | 521:4,7 | 612:4 615:3 | become 408:16 | 433:14 434:1 |
| 444:3 445:11 | 522:3,6,7,22 | 616:6 619:16 | 485:20 | 434:2 436:12 |
| 446:9,22,22 | 523:1,3,5,6 | 619:17 | 493:14 | 436:13,20 |
| 447:1 448:5 | 524:4,7 | 620:16,18,19 | becomes 359:5 | 438:20 439:6 |
| 448:13 | 525:14,16 | 623:18 625:2 | becoming | 439:9,10,21 |
| 450:10 | 526:7,11,15 | 625:5 | 446:21 | 440:16,18,19 |
| 451:15 | 527:8,18,20 | Beadersdtadt | been 331:21 | 441:20 446:4 |
| 452:19 | 528:14,16 | 364:6,20 | 332:21 | 446:21 |
| 453:14 454:9 | 529:22 534:4 | 368:14 369:4 | 333:10,10 | 447:17 448:2 |
| 454:15 455:1 | 534:6 535:6 | 369:16 372:1 | 336:15 346:3 | 448:21 458:8 |
| 455:4 456:7 | 535:16,18 | 373:12,19 | 350:13 | 458:10,13,18 |
| 457:5,10 | 537:12,13,21 | 374:8,17 | 351:10 | 458:20 |
| 458:22 459:3 | 538:1,14 | 375:10 | 353:15 | 459:14 463:5 |
| 462:12 | 545:5 546:1 | 377:11 393:4 | 356:18 360:5 | 469:20 473:6 |
| 463:13 464:4 | 550:8 551:3 | Beadersdtadt's | 361:19 362:4 | 475:15,16 |
| 464:10 | 551:6 559:19 | 376:2 385:4 | 362:5 367:2 | 477:17 478:2 |
| 465:11,20 | 560:9 561:4 | bear 369:17 | 367:14,21 | 479:9,20 |
| 466:19 468:6 | 561:18 | 513:7 575:21 | 368:2 374:7 | 480:14,17 |
| 468:9 470:15 | 562:22 | beaten 576:22 | 374:12,21 | 481:12,13 |
| 470:22 | 565:11,13,14 | became 552:13 | 375:1,2,5,6 | 482:18 483:8 |
| 472:22 473:1 | 565:20 567:8 | because 356:20 | 375:10,12,14 | 484:8,9,11 |
| 473:2,6 | 567:10 568:6 | 366:9 369:18 | 375:17,20 | 485:13 |
| 475:3 476:5 | 569:19 | 370:22 372:4 | 376:3,8 | 486:16 490:3 |
| 477:6 479:17 | 571:10,18 | 372:12 | 377:2,3,21 | 493:1 494:14 |
| 481:5,7 | 572:11,19,20 | 377:12 378:1 | 378:6 379:2 | 506:7 513:13 |
| 487:5,22 | 574:4,10 | 386:10 | 379:19 381:3 | 514:13,17 |
| 489:20 491:9 | 575:11 579:8 | 404:14 412:5 | 382:14 | 517:9 520:18 |
| 491:13 492:1 | 579:11 580:2 | 424:16 | 384:15 385:1 | 522:17 |
| 493:3,16 | 580:13,15,17 | 428:19 444:4 | 385:3,15,16 | 525:18,19 |
| 494:1 495:7 | 580:18 | 445:21 | 388:6 389:18 | 527:11 530:6 |
| 495:20 496:2 | 581:14,20,21 | 446:13,14 | 389:19 390:1 | 535:20 |

| | | | | |
|----------------------|----------------------|------------------------|-----------------------|------------------------|
| 539:11,14,16 | 570:14 571:3 | 620:21 | 430:11,13 | 469:6 470:12 |
| 539:21 540:1 | begins 410:1 | 625:14 | 431:1 450:2 | 475:10 478:8 |
| 540:2 556:5 | 418:16 | belied 406:9 | 478:8 530:9 | 489:2,5,16 |
| 556:14 | 422:18 426:8 | belief 363:2 | 588:4 | 501:14 |
| 557:17 | begun 335:10 | beliefs 338:19 | benchmarking | 505:10 |
| 558:16 563:5 | 478:17 | 339:14 340:1 | 413:3 | 515:16 |
| 563:6 566:17 | behalf 321:12 | 341:17 366:9 | benchmarks | 537:14 539:1 |
| 573:3,4 | 322:9,19 | believe 345:19 | 345:14 | 539:9,18 |
| 583:1 585:21 | 323:9,18 | 365:8 370:2 | benefit 327:11 | 541:6 542:13 |
| 589:5 594:17 | 324:7,16,22 | 371:12 | 327:15,19 | 543:10 544:6 |
| 596:4,4 | 325:9,18 | 380:11 404:2 | 330:5,12,19 | 544:8 553:10 |
| 600:18 | 326:9 471:15 | 404:5 477:4 | 334:6,10 | 554:13 556:3 |
| 602:10 603:8 | behave 444:6 | 487:2 498:15 | 453:13 466:3 | 563:11,13 |
| 610:15 | 448:16 | 506:14 | 466:4 467:14 | 567:3 569:2 |
| 612:16 | 450:16,18 | 592:17 605:8 | 469:12 480:6 | 569:7 580:3 |
| 613:20,20 | 551:7 | believed 342:1 | 489:4,9,15 | 582:12 584:8 |
| 619:20,21 | behavior | 363:19 | 490:1,7 | 584:16 585:6 |
| 620:1,1 | 336:20 340:3 | 369:12 | 492:15 | 585:16 586:7 |
| 621:11 622:1 | 345:8 386:19 | 444:14,15 | 499:16 | 586:22 |
| before 321:14 | 403:7 414:17 | believing | 500:21 510:7 | 589:15 590:5 |
| 346:20 351:9 | 416:22 | 477:16 | 537:20 538:2 | 591:9 592:20 |
| 364:12 399:4 | 444:12 | belittled 602:7 | 538:2,8 | 594:10 |
| 427:18 452:2 | 475:20 | BELKNAP | 601:13 | 609:12 610:4 |
| 456:2 467:6 | 480:13 482:1 | 325:3 | 607:11 | beyond 334:22 |
| 467:17 | 482:17 484:9 | below 377:1 | benefiting | 583:5 |
| 479:14,19 | 484:11,14,16 | 450:12 | 481:9 | bibliography |
| 515:22 526:8 | 484:16 488:4 | 497:21 501:6 | BERMAN | 338:16 |
| 541:11 547:3 | 488:16 | 501:8 502:19 | 322:3 | bidding 485:11 |
| 547:8 571:14 | 563:22 | 513:11,12 | besides 332:22 | bids 506:3,6 |
| 579:17 580:1 | 564:21 | 550:13 | 469:2 | big 511:16 |
| 589:8 595:6 | 621:13 | 551:12,17,21 | best 490:11 | 596:21 |
| 615:18 | being 368:1 | 552:6,7,9,19 | 491:6 540:17 | 598:15 |
| 617:18 | 374:4 392:16 | 552:19 553:5 | 615:12 | bill 577:9 |
| befuddled | 397:10 404:8 | 572:12 588:9 | better 485:22 | 602:18 |
| 535:13 | 424:16 | 588:9 589:1 | 500:10 | billing 567:22 |
| began 429:5 | 445:15 447:3 | 591:20 596:7 | between | 569:9 |
| 596:9 | 454:16,17 | benchmark | 343:20 | bioequivalen... |
| begin 407:4 | 457:7 472:20 | 339:18 | 357:22 | 625:18 |
| 465:3 596:12 | 476:3 481:8 | 345:20 | 362:14 369:7 | bioequivalent |
| beginning | 489:13 | 348:15 356:3 | 372:8,8 | 625:17 |
| 364:16 419:8 | 491:16 497:7 | 365:2 369:8 | 373:6 375:9 | 626:17 |
| 436:14 | 518:1,8 | 388:10 412:2 | 378:5 383:17 | biotech 453:20 |
| 471:18 | 525:15 | 412:15 | 406:15 431:4 | 466:14 |
| 473:10 | 572:20 616:9 | 426:21 427:2 | 431:16 | bit 363:1 366:1 |
| 530:21 | 616:11 | 427:5 430:9 | 432:16 458:6 | 422:5 427:19 |

Volume II

Boston, MA

10

| | | | | |
|----------------------|----------------------|-------------------|-----------------------|-----------------------|
| 452:8 457:15 | 496:18 | 401:16 432:6 | 525:14 527:7 | 519:5,6,7,11 |
| 484:2 529:5 | 511:18 | 435:13 437:2 | 527:14 533:2 | 521:6 528:15 |
| 580:1 | 575:18 | 586:14 615:7 | 534:7 537:5 | 556:12 |
| blank 471:1 | 580:20,22 | 621:20 | 538:3,6 | 557:15 559:3 |
| 544:15,15 | 581:3 584:17 | 622:14,16 | 545:2 546:3 | 561:17 563:8 |
| Blue 343:12 | 591:7 594:10 | 623:2 | 549:15 | 563:9 567:7 |
| 496:11 | 594:16 600:1 | but 333:16 | 551:19 552:7 | 569:18 571:9 |
| 518:15 | 600:8 603:10 | 334:12 340:7 | 564:6 569:13 | 575:5 579:7 |
| 589:20 | 604:3 624:14 | 341:3,4 | 570:21 | 579:12,15,18 |
| Blues 521:13 | brands 528:4 | 344:11 345:1 | 572:21 574:4 | 580:2,13,16 |
| BMS 396:15 | break 388:20 | 345:4 351:5 | 576:3 577:2 | 584:15,22 |
| 507:21 | 452:1 455:3 | 352:12 | 580:1,22 | 585:1,3,6,16 |
| 586:20 | 456:2 498:3 | 356:16 357:4 | 581:15 584:1 | 586:9 587:6 |
| BOCKIUS | 498:12 | 357:9,17 | 585:9,9,18 | 587:8,12 |
| 326:3 | 500:16 | 377:5,15 | 587:2,11,21 | 603:4,9 |
| body 393:10 | 528:20 581:7 | 384:20 396:7 | 588:5 590:2 | 604:7 |
| Book 518:16 | breaks 387:17 | 399:11 | 590:16 594:8 | buy 383:1 |
| 518:16 | brief 588:21 | 400:10 406:7 | 594:19 | 395:14,15 |
| 589:20 | bring 345:5 | 411:18 412:9 | 595:21 | buyer 598:2,19 |
| books 518:21 | 369:17 | 420:10 421:5 | 600:12,13 | 598:21,22 |
| Boston 321:19 | Bristol-Myers | 421:6,20 | 604:22 | 599:2,7,10 |
| 324:5 | 322:20 | 422:11 426:3 | 605:12,22 | 607:22 |
| both 394:3,7 | broad 390:5 | 426:4 427:9 | 606:15 608:8 | 608:15 619:2 |
| 447:12 | 560:11 | 427:16 428:1 | 608:16 611:4 | buyers 608:13 |
| 503:13,21 | broader | 428:15,18 | 614:19 616:8 | 608:14,15 |
| 504:2 531:3 | 557:19 558:1 | 430:18 | 617:1,21 | 609:3 612:7 |
| 537:4 548:1 | broken 504:22 | 431:13 436:7 | 618:22 | 612:8 |
| 594:15 604:2 | buck 497:1 | 436:7 437:7 | 619:10,22 | buyer's 608:21 |
| bottle 406:6 | bucks 366:17 | 437:18 | 626:8 | buying 339:12 |
| bottom 516:16 | built 352:17 | 438:18 | but-for 375:16 | 377:5,7 |
| bought 522:1 | 368:19 | 441:15 | 377:1,4,15 | by-line 558:10 |
| 522:11 | 387:18 | 442:16 445:3 | 380:13 381:5 | B-covered |
| Boulevard | bullet 550:9 | 445:7 453:5 | 383:3,10,11 | 560:3 |
| 324:19 | 553:17 | 457:15 461:2 | 385:7 387:18 | |
| bound 494:16 | bundled | 462:3 469:20 | 389:10,14 | C |
| 543:14 | 470:20 | 470:20 485:8 | 414:20 | C 321:10 |
| brand 495:2,7 | bundles 480:3 | 486:9 492:22 | 431:14 | 325:15 326:6 |
| 516:20 | Bureau 484:13 | 494:8 498:16 | 434:13 443:5 | 330:1 443:19 |
| 603:20 605:7 | BURLING | 499:13,22 | 454:22 | 484:19,20 |
| 606:5 607:15 | 325:12 | 501:20 | 458:20 | 485:8 487:19 |
| 609:10 610:5 | Bush 338:22 | 504:21 | 489:22 | 506:16 |
| branded | business | 511:20 512:7 | 491:22 492:8 | 508:10,12,21 |
| 356:21 392:8 | 358:13 390:3 | 517:1,18 | 493:18 494:3 | 551:4 |
| 447:13 448:6 | 391:9 396:21 | 519:1,10 | 494:9 495:21 | calculate |
| 463:19 | 397:21 398:2 | 523:3 524:5 | 504:1,3,12 | 361:20 449:2 |

| | | | | |
|----------------------|----------------------|-----------------------|-----------------------|-----------------------|
| 454:18 465:5 | 409:12 | 522:3 524:4 | 398:16,20 | 614:14 615:2 |
| 465:6 527:18 | 489:21 | 527:1 529:21 | 401:11 | 616:18 617:8 |
| 581:10 603:9 | 502:17 605:2 | 537:21 540:6 | 405:19 426:7 | cases 360:4 |
| 612:18 614:4 | can 338:10,12 | 540:22 544:5 | 427:20 | 384:16 |
| 614:10 | 338:15 | 544:12,20,20 | 429:18 | 394:13 395:6 |
| calculated | 339:15 340:5 | 547:11 550:8 | 467:13 | 396:5,14 |
| 366:6 419:13 | 342:5,13 | 557:6 565:17 | 515:16 | 402:4 408:12 |
| 423:11 | 344:6 347:2 | 567:13 | 516:21 | 464:2 475:15 |
| 464:17 | 347:20 348:4 | 568:13 572:7 | Caremark/A... | 478:4 503:13 |
| 522:18 | 349:11,13 | 575:15 577:2 | 398:9 | 519:4 537:21 |
| 527:19 580:3 | 351:4 353:22 | 583:5 589:14 | cart 595:6 | 537:22 |
| 612:22 | 359:15 360:4 | 589:16,21 | case 332:18,22 | 602:21,22 |
| calculating | 360:6 361:22 | 590:16 591:1 | 333:1,7,9,19 | 603:3,14,17 |
| 454:22 461:8 | 364:15,20 | 591:2 592:5 | 333:21 334:1 | case-by-case |
| 464:16 | 371:2 379:9 | 592:6,7,8,10 | 334:4,7 | 443:14,17 |
| 525:22 | 382:1,1 | 595:4 598:18 | 335:7 337:10 | categories |
| calculation | 388:19 393:4 | 615:21 | 337:14 359:4 | 354:15,17 |
| 361:10 | 394:11 | 617:21 | 370:13 | 355:18 356:1 |
| 382:15 | 396:13 401:1 | 620:13 | 389:17 | 472:9 576:1 |
| 459:21 | 402:21 | cannot 535:6 | 391:15 | 581:9,16 |
| 460:11,22 | 404:22 405:2 | 579:7 | 409:15,16 | 583:3,3 |
| 461:5 513:6 | 407:4 410:18 | can't 340:5 | 410:15 | 611:7 |
| 520:4 537:5 | 416:2,2,16,16 | 383:3 390:22 | 411:11 412:2 | categorization |
| 587:17 | 416:17 | 394:13 425:3 | 415:15 418:1 | 356:6 |
| 620:12 | 417:10,12 | 428:15 | 425:8 427:18 | category |
| calculations | 418:5 419:3 | 431:15 | 454:7 457:6 | 472:13 |
| 349:8 359:20 | 423:19 | 433:20 449:6 | 461:9 467:22 | 610:13 611:6 |
| 361:5 495:19 | 424:10 | 499:4 571:16 | 469:15 478:4 | 625:2,6 |
| 521:16 612:3 | 428:13 | 598:6 605:10 | 478:6 481:11 | causation |
| 613:11 | 429:11 | 605:12 | 482:6 483:7 | 513:4 529:21 |
| calculator | 432:21 | 616:15 618:4 | 500:2 509:3 | cause 401:13 |
| 579:19 | 437:22 | capabilities | 512:8,10 | 567:6 |
| calendar | 438:17 | 600:2 | 516:22 | caused 412:22 |
| 471:18,21 | 451:22 455:6 | capable 407:2 | 526:12 536:8 | Cavanaugh |
| 473:10 | 462:12 | capital 543:12 | 536:17 537:9 | 325:4 327:6 |
| call 326:16 | 464:14 465:1 | 543:13,13 | 549:5 564:14 | 357:11 |
| 334:12 464:7 | 469:1 471:8 | car 497:13 | 566:2,10 | 602:17,18 |
| 533:20 | 474:22 475:3 | Cardinals | 568:6 583:17 | 622:21 |
| called 321:12 | 476:21 | 590:22 | 584:4 586:19 | 626:19 |
| 375:21 473:2 | 483:15 | 599:13 | 586:20 591:7 | CBH 515:18 |
| calls 503:14 | 486:21 | Care 517:5 | 591:11 | census 340:17 |
| Cambridge | 490:13,15,15 | Caremark | 604:11 606:6 | center 550:16 |
| 322:6 | 499:15 503:5 | 327:14 | 606:9,18 | 552:21 |
| came 360:14 | 514:1,6,11,20 | 328:18 | 607:13,15,19 | cents 445:18 |
| 360:21 | 520:3,7 | 330:11 | 608:7 610:12 | 445:20,21 |

| | | | | |
|------------------------|------------------------|-----------------------|-------------------------|-----------------------|
| 446:4 497:2 | chain 426:19 | characterizes | 404:21 | 362:12 363:8 |
| 497:9,10 | chains 342:9 | 373:4 | 464:14 593:5 | 363:11,17 |
| 509:22 | 361:2 448:11 | characterizing | cited 341:1 | 364:1 365:12 |
| certain 340:12 | 578:7 601:5 | 373:3 626:10 | 477:12 | 365:20 366:8 |
| 389:3 391:20 | 623:15 | charge 576:10 | 478:19 483:8 | 373:12 375:6 |
| 424:8 446:14 | chance 350:20 | 576:12 | 485:13 510:6 | 378:1 384:7 |
| 453:19 | 426:3 525:5 | chargeback | 518:5 532:19 | 384:8 385:20 |
| 462:22 | change 332:10 | 576:19 578:4 | 533:1 617:14 | 388:5,15 |
| 466:13 507:2 | 332:13 | 605:8,19 | 624:8 | 389:5,10,17 |
| 516:19 528:4 | 408:13 409:9 | chargebacks | citing 399:9 | 392:16 |
| 534:19 | 416:22 | 382:5,13,17 | 485:3 | 393:21 410:2 |
| 535:18 565:4 | 426:18 | 383:16 462:2 | City 324:20 | 412:13 413:2 |
| 609:17,18 | 556:18 | charged | Civil 321:14 | 413:6,10,13 |
| 619:14 623:9 | changed | 329:18 566:6 | claim 333:16 | 413:15 |
| 623:10,11 | 421:17 | 584:9 | 343:17 345:5 | 416:15 |
| certainly 340:6 | 432:10 562:9 | charges 381:10 | 510:3 520:14 | 434:11 436:2 |
| 340:17 | 562:10 587:1 | 545:20 | 520:15 | 437:8,12,12 |
| 394:13 406:9 | 594:6,20 | charging | 521:20 | 439:2 440:18 |
| 429:11 | changes | 424:17 563:5 | claims 335:18 | 458:3,5,6 |
| 430:22 446:9 | 402:21 | charts 591:22 | 336:1 338:4 | 459:5 482:12 |
| 482:20 | 451:11 | check 384:21 | 338:6 341:17 | 484:17 486:2 |
| 484:10 | 499:16 | 453:7 583:21 | 341:18,20,21 | 489:5 491:8 |
| 504:20 | changing | 613:6 | 342:2,12,14 | 495:22 507:5 |
| 505:22 | 421:1 555:2 | chemical | 342:21 343:2 | 507:11,12,14 |
| 506:20 511:7 | channeled | 625:14,22 | 343:17 348:9 | 507:17,18,19 |
| 529:11 | 597:6 | 626:14,16 | 349:18,21,22 | 508:11,16,22 |
| 531:21 532:5 | channels | Chicago | 350:3,9,11,17 | 511:9,10 |
| 548:19 | 543:22 | 451:12 481:2 | 437:18 511:7 | 514:11,17 |
| 553:12 568:6 | chapter 532:6 | chief 370:8 | 512:3,20,21 | 519:20 520:2 |
| 573:6 578:19 | 532:10,12 | China 591:1 | 513:1 520:11 | 520:6,13,18 |
| 598:13 610:9 | characteristic | 599:12 | 520:21 521:2 | 521:19 |
| 611:9 615:3 | 543:10 | choice 597:21 | 521:4,15 | 522:17,22 |
| 615:6,8 | characteristics | choose 522:20 | 525:12 536:4 | 525:15 526:3 |
| 620:16 | 550:3,7 | Cigna 335:15 | 536:21 537:4 | 527:3,17 |
| CERTIFIC... | characteriza... | 342:4 343:3 | 537:7 572:14 | 535:6 555:20 |
| 628:1 | 555:22 | 373:20 496:6 | 573:6 | 556:1 582:15 |
| certified | characterize | 521:12 | claim-by-clai... | 595:16 |
| 321:14,16 | 336:5,20 | Cipro 332:22 | 350:7 | 598:18,19,21 |
| 332:21 | 339:8 343:19 | 394:20 | clarify 457:21 | 598:22 599:2 |
| 336:15 | 350:12 | 602:21 | 490:15 | 603:8,8 |
| 527:17 603:8 | 371:16,18 | Ciprofloxacin | 517:14 | 614:13 |
| 628:19,19 | 373:17 | 604:18 | class 332:20 | 615:14 618:1 |
| certify 628:7 | characterized | circumstances | 333:2 336:15 | classes 341:14 |
| cetera 411:11 | 336:6 345:18 | 543:7 | 353:8,18 | 356:6 360:18 |
| CFO 373:20 | 472:11 | cite 340:21 | 361:14 362:2 | 384:19 386:4 |

| | | | | |
|------------------------|------------------------|----------------------|----------------------|------------------------|
| 386:5 387:4 | 543:15 | 330:2 | 611:6 612:7 | 404:15 |
| 413:14 | CMK-AEP-... | commencing | 612:11,12,12 | 405:17 447:2 |
| 519:22 | 327:17 | 321:21 | comparing | 451:10,19 |
| classify 475:21 | 330:15 | commission | 502:17 | 480:18 |
| classwide | CMK-AWP | 328:17 | comparison | 482:17,22 |
| 526:19,22 | 327:21,22 | 398:16,19 | 431:21 569:7 | 483:4 485:11 |
| 529:22 540:7 | 330:21,22 | 402:1,8,17,20 | 589:19 591:9 | 494:20,20 |
| clear 433:21 | 467:15 | 531:6 628:20 | 591:11 | 495:12 506:3 |
| 444:20 445:9 | 469:13 | common 337:7 | comparisons | 506:5 553:1 |
| 448:8 481:10 | CMK-AWP-... | 433:21 622:7 | 613:19 | 603:5,19 |
| 485:21 | 327:16 | Commonwe... | compendia | 625:5 |
| 493:11 535:5 | 330:14 | 321:17 628:2 | 518:22 | competitiven... |
| 555:5 568:19 | CMS 449:4 | 628:6 | 586:17 | 488:7 |
| 576:2 610:16 | coalition | communicate | compete 398:2 | competitors |
| clearer 437:6 | 485:15 | 490:4 | 403:4 470:19 | 444:6 448:15 |
| 493:14 553:4 | code 442:18 | companies | 621:19 | 450:16,17 |
| clearing | codes 442:13 | 386:3,14 | 622:12,15 | 551:6 625:3 |
| 607:20 | 553:21 | 404:13 | 623:1,16 | Complaint |
| clearly 369:4 | 554:11 | 405:14 | 626:12 | 409:14,15,17 |
| 374:2 384:18 | collapses 433:9 | 450:20 462:9 | competed | 410:16,22 |
| 486:5 568:9 | colleague | 480:7 485:16 | 403:11 | 411:1 412:1 |
| client 398:7 | 488:18 | 538:16 | competing | 412:5,7 |
| 426:21 | colleagues | 540:20 | 479:15 | 413:21 |
| 490:14 | 622:4 | 584:21 | competition | 414:17 415:4 |
| 500:14,22 | collectively | 586:21 | 390:8,17,18 | 415:9,12,17 |
| 613:1 619:4 | 581:13 | 588:14 | 390:19 391:2 | 428:11,12,13 |
| 619:5 | come 342:13 | 625:15 626:1 | 401:10,13 | 436:17 440:3 |
| clients 396:6 | 360:8 361:5 | 626:12 | 403:12,13 | 465:7 567:19 |
| 403:10 417:5 | 366:8 372:19 | company | 404:4,7 | 614:7 616:18 |
| 475:7 476:2 | 408:17 | 376:3 385:5 | 406:8 451:13 | 617:14 |
| 477:2,4,15 | 434:14,17 | 385:22 464:6 | 479:21 480:2 | complete 335:7 |
| 558:7 619:21 | 449:15 452:2 | 464:21,22 | 480:21 481:3 | 495:3 612:17 |
| client's 510:18 | 453:3 457:18 | 516:5 576:6 | 481:13,20 | 618:10 |
| 511:14 512:9 | 477:4 499:14 | company's | 482:4,11 | completely |
| clinical 494:8 | 513:7 520:11 | 578:17 | 483:6 622:6 | 561:5 |
| 494:19 | 525:21 | compare 501:5 | 624:15 625:9 | complex 398:3 |
| close 348:16 | 593:19 601:8 | 501:13,16 | 625:17 | 480:5,11 |
| 360:22 444:7 | comes 349:2 | 502:3,11 | competitive | complexities |
| 450:1 500:2 | 521:19 526:3 | 582:9 592:10 | 390:3,5,6,7 | 559:13 |
| 550:16 580:2 | 542:7 | 615:17 | 390:11,12 | complexity |
| 604:12 | comfort 452:1 | compared | 391:3,6,18 | 400:22 |
| closely 480:10 | coming 386:17 | 590:16 591:2 | 396:22 | 481:21 |
| 532:13 535:8 | 461:17 569:1 | 591:3 597:20 | 397:10,18,21 | complies |
| 584:2 | 569:22 | 601:20,22 | 400:6,12 | 570:13 |
| closely-set | commencem... | 610:18,20 | 403:18 | complying |

| | | | | |
|-----------------------|------------------------|-----------------------|----------------------|-----------------------|
| 393:13 | 572:8 | 352:22 | 335:19 | 463:1 482:13 |
| 426:15 | conclusion | 395:18,19,20 | considerably | 607:8 |
| 443:21 | 402:10 410:7 | 572:14 | 387:11 392:9 | consumer |
| 452:11 | 412:16,20 | conflated | 425:2 | 478:12 |
| 467:16 468:4 | 434:14,18 | 419:19 | consideration | consumers |
| 469:9 470:2 | 442:7 453:3 | conforms | 383:17 | 386:9 388:2 |
| 471:12 | 502:16 | 431:5 | 422:21 | 473:11 485:9 |
| 476:17 507:8 | 503:16 | confused | 555:12 615:9 | contained |
| 515:14 | 505:18 513:4 | 535:14 | considered | 545:12 |
| 516:11 | 527:6 585:14 | confusion | 493:16 | contamination |
| 530:17,19 | 617:18 623:8 | 560:22 | consistency | 613:8 |
| 550:1 | 624:6 | Congress | 349:3 | contend |
| components | conclusions | 534:17 571:6 | consistent | 616:19 |
| 614:5 | 342:18 | conjecturing | 352:16,21 | contention |
| comport 597:9 | 432:21 | 527:15 | 365:9 367:16 | 472:14 |
| compound | 456:21 | connection | 370:3 371:13 | context 364:13 |
| 625:14,22 | 487:22 488:8 | 333:19,21 | 509:12,18 | 397:15,19 |
| 626:14,16 | 530:5 623:7 | 334:1,4,7 | 552:16 | 402:18 |
| compounded | concrete 364:4 | 353:20 398:9 | consonant | 418:21 |
| 453:20 | conditioned | 401:2 469:15 | 584:18 | 420:10 |
| 466:14 | 411:8 620:16 | 483:6 505:9 | conspiracy | 421:21 422:6 |
| comprehensi... | 620:20 | 540:8 542:19 | 329:18 442:6 | 422:7 424:7 |
| 427:10 | conditions | 554:13 | 444:18 566:6 | 429:3 440:8 |
| 430:20 | 471:14 | 607:13 | 587:16 588:3 | 448:19 |
| computers | conduct | 610:11 | 607:11 | 449:21 |
| 465:10 | 367:14 | 621:17 622:2 | conspired | 488:20 557:5 |
| concealed | 435:17 531:8 | consequence | 606:20 | 557:19 558:1 |
| 368:7 369:3 | conducted | 585:11 | constancy | 558:13 |
| 388:15 | 408:20 | consequences | 586:3 | 608:22 616:1 |
| concealment | 475:17 534:5 | 435:16 | constant | 617:21,22 |
| 345:7 368:10 | conducting | 440:21 441:1 | 584:16,20 | 620:22 |
| 406:5 478:10 | 357:19 | 574:16 | 585:5 587:3 | continuation |
| conceded | 617:19 | consequently | 590:5 | 560:21 |
| 437:7,11 | conference | 436:2 | constituted | continued |
| conceivably | 326:16 | conservative | 539:12 | 321:11 323:1 |
| 591:8 | 334:12 | 495:21 | constrained | 324:1 325:1 |
| concentration | confidence | 522:21 | 576:16 | 326:1 332:1 |
| 400:4 | 349:15 | 601:11 | consultant | 413:20 |
| concern | confidential | consider 396:6 | 489:15 490:7 | 415:15 |
| 363:14 | 440:6 616:10 | 512:7,9 | 492:15 | 455:21 |
| Concerning | confidentiality | 550:18 | consultants | continues |
| 329:12 | 396:4 | 553:20 | 334:6,11 | 468:20 |
| 547:20 548:4 | confirm 471:4 | 554:10 555:1 | 480:6 489:4 | contract 382:2 |
| conclude | 518:2,9 | 555:18 556:2 | 489:10 490:1 | 432:8 453:11 |
| 476:21 572:7 | confirmed | considerable | consulting | 454:15 473:8 |

| | | | | |
|--------------------|------------------------|------------------------|-----------------------|-----------------------|
| 476:22 | conveniently | 489:18 | corroborative | 396:6 397:14 |
| 491:16 493:7 | 453:6 | 506:16 508:3 | 620:4 | 400:19,20 |
| 502:20 503:2 | conversation | 508:4,7,8,12 | cost 365:7 | 419:5,17 |
| 503:14 | 333:14 | 520:8 522:12 | 369:15 383:2 | 431:12 445:3 |
| 504:16,21 | 496:19 | 528:6 529:10 | 383:20 | 461:18 |
| 509:3,5 | conversations | 529:12,15,20 | 401:14 | 462:19 463:5 |
| 515:15,22 | 334:10 | 530:3,13 | 404:11 | 465:11 467:4 |
| 523:20 | copy 329:20 | 536:9 551:9 | 420:21 421:4 | 483:2,13 |
| 524:11 525:8 | 344:18 | 553:11,14 | 421:13 | 490:12 491:7 |
| 528:3 542:10 | 354:21,22 | 559:4,5,7,11 | 422:22 | 493:6,16 |
| 545:12 | 399:7 417:21 | 559:15 | 424:12 | 494:1 495:7 |
| 615:10 | 425:7 515:15 | 569:20 576:7 | 474:17 | 495:13,14,14 |
| 617:10 | 532:18 534:4 | 576:8,10,11 | 477:13 | 495:15 |
| contracted | 546:14 | 577:4,8 | 485:14,18 | 520:12 533:6 |
| 531:7 | 565:22 570:3 | 578:8,9 | 497:21 498:1 | 535:21 |
| contracts | 570:5 | 579:4,6 | 499:4,5,21 | 539:15 557:5 |
| 352:17 378:5 | corner 535:1 | 580:8 581:2 | 507:1 516:15 | 561:10 |
| 405:17 | Corp 323:10 | 581:12 | 517:4 518:4 | 581:20,21 |
| 414:22 | 323:19 | 582:17 | 541:1 552:20 | 591:8 595:9 |
| 415:11 437:4 | 326:10 | 583:18 | 556:3,4 | 603:4,9 |
| 452:17 453:8 | Corporation... | 584:10 | 558:3 560:4 | 609:8 612:18 |
| 456:5 457:7 | 324:8 | 586:10,11 | 560:6,8,12,15 | 613:19 614:4 |
| 465:18 | correct 333:3,6 | 587:7 589:15 | 560:20 562:4 | 615:17 |
| 470:19 | 333:9,20 | 590:6 591:12 | 562:5,13,17 | 619:16,17 |
| 475:17 477:1 | 336:10 352:4 | 603:2,3,15 | 562:22 564:8 | couldn't |
| 480:5,11,14 | 354:6 355:15 | 604:10 605:3 | 564:12 | 334:12 437:6 |
| 480:16 | 355:16,19 | 605:4 606:4 | 572:11,18 | counsel 344:17 |
| 489:13 503:1 | 370:14 | 606:11,12 | 573:14,20 | 396:8,14 |
| 503:3,5 | 380:18 381:6 | 609:7 611:8 | 591:6 595:18 | 412:11 413:9 |
| 504:21 505:6 | 381:7,14 | 613:2 615:5 | 601:3 620:3 | 414:7 415:14 |
| 505:10 | 384:11,20 | 624:12,19 | 621:2 | 441:13 442:3 |
| 506:22 508:1 | 400:15,16 | 625:6,12 | costing 406:16 | 442:5 501:22 |
| 508:5 510:21 | 405:3 421:20 | correctly 353:7 | costly 518:17 | 527:2 539:10 |
| 537:14 | 427:1 431:22 | 424:16 | 562:11 | 615:13 618:1 |
| 538:11 | 432:22 433:9 | correlation | costs 360:16 | counselor |
| 541:11 544:4 | 436:17 | 590:21 | 408:18 | 571:20 |
| 544:6,8,13 | 449:21 | corroborate | 457:13 558:7 | count 329:19 |
| 558:6 585:20 | 452:21 | 414:10 | 558:10 | 458:1 566:7 |
| 614:17,18 | 465:22 466:1 | 481:17 597:9 | 590:15 619:1 | counted 519:9 |
| 615:14,18 | 466:10,11,15 | corroborated | 620:18 621:4 | counter 397:6 |
| 616:6 618:5 | 466:16 468:7 | 388:9 441:6 | could 345:19 | 505:5 |
| 619:9,13 | 469:4 470:10 | corroborating | 352:1 360:3 | country 339:10 |
| contractual | 474:19 | 405:8 | 368:6 369:13 | 427:11,15 |
| 403:7,15,16 | 476:20 479:3 | corroboration | 372:19 377:6 | 430:21 |
| 458:5 | 482:8 483:7 | 405:7 505:19 | 395:12,14,15 | couple 407:22 |

| | | | | |
|-------------------------|----------------------|-----------------------|---------------------|-----------------------|
| 452:1 455:4 | 466:19 468:7 | damage 346:8 | 414:12 415:8 | 329:13,22 |
| 574:1 | 469:6 470:13 | 394:22 436:9 | 441:10,14,16 | 331:10 399:6 |
| course 435:17 | 471:15,17,19 | 437:17 | 442:16 443:1 | 515:17 |
| 618:8 620:7 | 472:3,7 | 459:10 495:3 | 449:1,3 | 547:21 548:2 |
| 625:20 | 474:21 475:3 | 515:9 520:20 | 461:18 463:3 | 548:5 549:8 |
| court 321:1 | 476:18 | 521:16,20 | 464:5,10,11 | 566:11 570:7 |
| 354:21 | 479:18 491:7 | 535:8 538:15 | 464:13 | David 329:4 |
| 361:13 | 499:15 | damaged | 465:15 | 425:8,12 |
| Coventry | 513:12,14,16 | 520:19 | 481:18 | Davidson |
| 515:16 | 513:19 515:3 | 522:17 | 493:14 511:7 | 328:11 |
| 516:21 517:7 | 519:12 | damages | 512:3,20,21 | 331:12 |
| cover 342:6 | 522:11,16 | 347:15 361:7 | 517:2,15,19 | DAVIS 323:12 |
| 499:4 | 523:2,4,5 | 361:12,21,22 | 517:19 | Dawn 593:13 |
| coverage | 525:9 606:3 | 366:6 367:4 | 520:21 | day 376:16 |
| 537:18 | customers | 433:5 434:10 | 521:16 | 414:19 |
| covering | 387:8 401:15 | 442:15,17 | 536:21 537:7 | 465:13 542:5 |
| 341:19 | 403:9 478:21 | 443:7 444:22 | 541:14 | 543:20 |
| COVINGTON | 481:6,12 | 459:4 481:19 | 544:16 | 544:17 561:7 |
| 325:12 | 483:1,2 | 504:14,15 | 567:20,21,21 | 568:20 |
| co-lead 396:13 | 493:4,5 | 513:1,6,7 | 573:6 582:7 | 628:15 |
| co-payer | 514:16 594:4 | 526:22 527:3 | 582:11 583:5 | days 471:18 |
| 507:12,18 | customer's | 527:19,20 | 583:6,7 | 473:9 |
| creating 587:6 | 523:20 | 537:5 558:19 | 597:8 600:19 | deal 361:13 |
| 587:8 | 524:10 528:3 | 558:21 | 605:1 613:7 | 362:5 363:8 |
| credits 462:1 | cut 347:20 | 569:17 | 613:9,15,17 | 365:11,20 |
| critically 534:8 | CV 465:3 | 587:17 | 614:1,3,9 | 376:4 396:13 |
| criticized | CVH 328:14 | damn 548:12 | 623:6 | 446:1 490:11 |
| 356:20 | 328:15 | data 333:11,12 | database | 491:7 509:15 |
| criticizing | 331:15,16 | 333:16 | 461:21 462:4 | 512:16 527:1 |
| 357:14 | CVS 391:6 | 335:13,15,18 | 462:9 463:21 | 529:9,11,13 |
| Cross 327:5,6 | cytoxan 582:1 | 336:2 337:4 | 464:1 | dealer 497:19 |
| 574:12 | 596:22 597:1 | 338:5,6 | date 334:2,5 | 497:20 498:1 |
| 602:16 | 611:12 612:1 | 340:21 | 353:22 359:1 | 499:5,21 |
| Cross/Blue | C.1 484:20 | 341:17,18 | 399:8 412:10 | dealers 498:20 |
| 343:12 | | 343:18 347:8 | 414:15 415:8 | dealing 381:11 |
| 496:11 | D | 347:12,12 | 447:19 | 385:5 448:5 |
| curious 390:1 | D 321:10 | 348:9 349:2 | 452:18 456:6 | 477:19 |
| 595:13,14 | 323:13 | 350:11 | 465:19 | 484:10 |
| 596:1 | 325:15 326:6 | 358:15 | 486:13 | 529:18 |
| currently | 327:1 330:1 | 384:15,21 | 500:22 | deals 405:1 |
| 423:4,5 | 473:8 518:11 | 392:11 394:4 | 504:22 538:7 | debate 469:6 |
| curve 560:13 | 518:12 | 394:4 395:4 | 546:4 548:2 | debts 460:14 |
| customary | 530:15 | 395:8,14,20 | 583:1 612:16 | 462:5,6 |
| 453:15 | 543:13 593:9 | 395:21 396:5 | 620:5 622:18 | decade 393:16 |
| customer | Dale 516:2 | 411:6 414:9 | dated 328:9 | 394:3 |

| | | | | |
|-------------------------------------|-----------------------------------|------------------------------------|-------------------------------|-----------------------------------|
| deceptive 345:8 598:3 | defendants 321:13 326:9 | delivering 480:18 | 422:10 425:7 | 469:21 |
| decide 349:6 | 333:15 346:5 | demand 560:13 | 425:12,18 | detailed 453:22 522:7 |
| 351:11 | 367:13 375:1 | demanding 619:21 | 426:2 518:2 | 567:20 |
| deciding 406:11 | 396:8,9 | demonstrate 443:1 481:20 | 546:8 572:6 | determination 526:6,7 |
| decision 402:7 | 411:7 414:13 | 520:3,12 | 594:21 | determinatio... 526:10 |
| 402:19 | 416:20 428:5 | 531:1 | 621:16 627:3 | |
| decisions 483:3 | 439:11 | demonstrated 360:5 361:8 | 628:9,11 | determine 338:12 |
| 483:3 | 442:10 458:2 | 410:9 529:22 | depositions 358:18 | 339:17 |
| declaration 332:12 | 501:22 | 535:7 | 370:14 | 340:14 343:6 |
| 344:19 | 570:16 574:2 | demonstrates 438:2 | 464:12 | 354:4 408:21 |
| 354:13,19 | 596:10 | department 340:17 | 537:12 | 431:15,19 |
| 355:5 366:7 | 612:20 613:7 | departure 414:6 | 583:14 | 433:4 443:13 |
| 391:13 | defer 397:1,4 | depend 435:3 | 612:17 | 479:8 512:10 |
| 410:13 432:3 | define 449:16 | 454:7 456:10 | derive 341:8 | 512:22 520:7 |
| 438:1 439:13 | defined 507:19 | 456:13 461:1 | 394:12 | 520:10,17 |
| 443:9,20 | 522:19 535:6 | 558:11 | derived 604:22 | 521:7 522:9 |
| 449:1 452:10 | defines 457:10 | 617:11,12,16 | describe 594:5 | 522:15 |
| 454:13 | defining 400:1 | depending 382:5 400:21 | 409:1 439:13 | 524:13 525:9 |
| 456:19 | 457:11 | 465:14 | 463:9 475:6 | 528:5 540:6 |
| 465:17 466:8 | 510:10 | 510:17 | 518:11 560:5 | 553:8,14 |
| 477:12 484:2 | definite 580:7 | 511:14 524:5 | 578:18 | 603:4 621:18 |
| 507:7 529:9 | 580:9 | 580:16 | 596:15 | 622:11 |
| 532:1 553:16 | definition 439:1 507:5 | 595:15 | describes 466:18 | determined 434:21 |
| 576:2,3 | 509:5 510:19 | 604:19 | 598:12 | 459:11,12,14 |
| 593:7 613:4 | 511:10 | depends 543:6 | description 534:15 | 517:4 525:17 |
| 613:22 | 516:13 | 545:9 | 572:13 | 579:8 611:4 |
| declarations 482:15 603:7 | 517:15 518:6 | deponent 430:8 | design 335:21 | determining 546:5 556:4 |
| decline 386:12 | 519:20 626:4 | depose 457:7 | design 337:1 347:6 | 593:20 604:6 |
| declined 386:6 | definitions 624:10 | deposition 321:11 | 351:19 | 609:4 |
| 411:16,17 | defrauded 415:16 416:2 | 328:21 329:4 | designed 339:22 | develop 336:9 |
| deep 588:22 | 479:9 | 330:3 357:12 | 435:17 | 344:2 371:15 |
| Deere 385:5 | degree 478:14 | 364:5 366:1 | 535:15 | 391:12 |
| 386:15,16 | 482:21 | 417:22 418:2 | designs 526:5 | 450:22 |
| 387:16 | 559:14 | 418:13 | desirability 494:18 | 494:15 |
| defeat 481:15 | degrees 438:12 | | desire 623:18 | developed 339:2 370:12 |
| defendant 322:19 323:9 | delighted 438:15 | | 623:20 | 370:13 |
| 323:18 324:7 | delightful 602:15 | | desires 486:3 | 410:12 |
| 324:16,22 | delineate 619:6 | | detail 463:9 | 432:20 433:3 |
| 325:9 396:3 | deliver 480:19 | | | 517:7 550:19 |
| 428:4 | | | | |

Raymond S. Hartman, Ph.D. Confidential - Attorneys' Eyes Only

October 8, 2004

Volume II

Boston, MA

18

| | | | | |
|---|---|---|---|---|
| 604:11,16,18 developing 353:21 360:9 550:19 DHHS 340:18 dial 460:6 did 334:17,19 339:13 360:13 368:8 374:10 386:11,14,20 387:7,8,12,17 413:12 437:9 441:7 443:3 444:8 449:3 500:8 520:3 532:15 533:5 533:19,20,22 540:19 550:18 556:17 564:6 571:1 572:14 595:8 603:16 607:10,14 613:5,12 614:8,10 didn't 370:2 371:12 375:22 387:13 388:1 435:9 440:14 442:21 447:17 532:17 534:7 588:21 589:1 598:9 616:18 differ 361:14 461:14 480:4 600:9 differed 356:9 521:8 difference 340:8 373:6 375:12 419:11 423:9 | 426:20 563:12 580:3 582:12 589:14 597:22 598:1 598:1,15 599:5 differences 337:16 358:6 360:22 372:8 384:19 600:21 different 340:1 340:2,3 342:7 343:11 343:15,16 346:13,15 347:18 348:21 352:9 356:15 357:20 358:1 360:17,17 361:1 373:14 373:22 374:1 390:19 403:14,17 408:17 431:13 434:18 438:18 445:1 453:13 464:3 464:9 484:14 513:1,8 521:9 529:17 542:9,10,14 543:19,19 545:20 556:16 582:5 582:8 583:2 588:14 595:15,19,21 596:11,12 597:13 599:19,22 600:1 601:4 | 601:7 604:19 605:5 611:10 611:16,19 612:7 617:10 626:1,8 differential 385:19 599:19,21 611:9 differentially 386:17 differentiated 348:21 differentiation 479:21 480:2 494:7 differently 464:7 595:22 596:11 604:1 difficult 480:15 499:11 543:4 difficulties 485:9 diligence 506:1 diltiazems 626:10 direct 327:4 332:1 417:10 418:15 443:22 452:8 455:21 483:13 516:9 571:2 626:22 directed 412:11 413:9 432:15 516:12 530:6 571:3 direction 539:10 directly 392:11 476:19 512:20 disagree 350:8 | 397:3 401:7 401:20 423:20 424:1 424:5 disagreeing 508:20 discern 595:4 discipline 485:10,22 disclosure 396:6 474:1 474:13,15 discount 374:19 375:13,18,22 385:8 464:8 502:19 510:15 511:11 discounting 386:3 discounts 352:16 367:21 374:6 374:9,11 376:22 377:21 385:13 386:7 386:7 387:1 387:7 388:1 388:12 389:3 392:3,17,19 404:19 445:15 446:13 447:2 448:10 458:14 461:22,22 462:1 478:15 501:6,8 513:9 528:10 528:14 578:5 578:7 588:22 597:20 599:21 | 606:20 609:16,19 discovery 452:17 456:6 457:21 465:18 discussed 332:14 334:14 444:19 484:15 519:19 522:20 545:19 551:4 622:3 discussing 374:14,15,15 443:10 discussion 334:17,20 335:2 453:4 455:8 467:8 discussions 333:11 440:7 475:18 488:21 disparities 607:16 dispensed 376:9 379:4 379:21 423:2 474:18 dispensing 454:3 457:12 dispute 489:1 dissimilar 565:11 dissipate 480:21 dissipation 412:7 distinct 582:5 distinction 594:9 distinguishes |
|---|---|---|---|---|

| | | | | |
|------------------------|-----------------------|--------------------|---------------------|----------------------|
| 563:11 | does 345:11 | 526:8 | 445:10 461:7 | 452:7 455:22 |
| distorted 346:6 | 358:15 | done 336:12 | 462:2 465:1 | 456:2 574:14 |
| distracted | 362:21 | 337:20 | 469:2,20 | 602:18 |
| 531:13 | 372:17 391:4 | 338:17 | 471:9 479:1 | draw 342:18 |
| distribute | 398:2 399:7 | 339:11 340:7 | 482:9 487:2 | 350:17 |
| 605:21 | 399:16,19,20 | 340:18 | 487:17 | 412:16,20 |
| distributed | 419:1 426:10 | 347:15 353:3 | 492:18,21 | 432:21 |
| 549:10 | 426:17 429:6 | 353:15 | 500:7 506:12 | 503:16 |
| distribution | 435:3 454:6 | 356:18 | 522:14 | drawing |
| 549:9 | 456:10,13,21 | 358:12 360:3 | 524:10,21 | 617:18 |
| DISTRICT | 469:7 474:20 | 360:5,6 | 525:8 527:14 | drawn 585:14 |
| 321:1,2 | 476:21 | 361:9 369:18 | 533:4,10 | 623:7,8 |
| diverge 434:19 | 478:12,14 | 391:8 394:2 | 537:17 538:3 | drive 620:2 |
| divergence | 481:20 | 394:22 397:5 | 546:12 | 623:22 624:3 |
| 388:14 | 490:21 | 399:14,22 | 547:17 | driven 436:5 |
| 596:13 | 505:13 | 403:2 409:5 | 549:21 556:2 | 439:3 464:10 |
| diverges 425:1 | 509:12 526:4 | 432:2 434:21 | 559:14 | 543:20 |
| diverging | 535:9 551:14 | 435:1 464:19 | 561:13 | driving 588:2 |
| 596:10 | 554:12 567:6 | 483:9 484:9 | 563:16 564:6 | drop 392:7,8 |
| DOCKET | 571:8 583:11 | 486:1,11 | 564:9,10 | 392:14 |
| 321:2 | doesn't 369:9 | 491:18 | 569:5 571:17 | dropped |
| docs 578:7 | 424:15 | 495:19 510:9 | 573:4,4 | 414:20 |
| 596:22 | 432:18 | 521:15 524:3 | 574:3 576:4 | drug 328:5 |
| Doctor 602:20 | 476:14 | 527:5 534:22 | 578:14 584:1 | 331:4 354:6 |
| doctors 609:22 | 479:14 | 536:20 554:7 | 584:4,19,20 | 356:9 358:1 |
| 622:12,15 | 563:10 | 555:1 586:5 | 589:10 | 360:3 369:14 |
| document | 589:20 | 595:10 600:3 | 595:13,14,22 | 376:4,8,9 |
| 321:7 399:4 | doing 332:5 | 611:22 612:3 | 596:3 599:8 | 379:3,4,20,21 |
| 401:9 402:13 | 340:9,10,15 | don't 333:4 | 599:13 602:6 | 380:5,14,16 |
| 467:5,17 | 340:19 348:4 | 344:13 350:2 | 605:17 621:1 | 381:19 |
| 468:3 469:10 | 349:13 359:6 | 352:12 | dose 488:13 | 382:16 386:3 |
| 469:14 471:6 | 359:16 506:1 | 354:18 | doubt 416:20 | 396:17 402:4 |
| 510:6 516:4 | 527:21 555:2 | 362:18 365:8 | 495:11 | 404:11 |
| 528:12 | 555:18,19 | 367:5 370:6 | 601:13 | 433:18 |
| 546:14 547:3 | 607:8 | 374:13 | 618:15 | 435:18,20 |
| 549:14 | DOJ 399:21 | 376:18 | down 377:11 | 437:4 445:18 |
| 566:20 | dollar 459:1,3 | 394:21 395:1 | 377:12 | 450:6,7 |
| documented | 509:21 | 397:12 | 453:17 460:2 | 451:6 461:14 |
| 616:10 | 620:10 | 398:11 | 493:7 497:12 | 463:19,20 |
| documents | dollars 366:19 | 399:13 402:7 | 574:20 620:2 | 477:12 |
| 344:8 400:14 | 377:6,7 | 404:16 405:1 | 623:22 624:3 | 485:14,18 |
| 400:18,21 | 381:17,20 | 417:17 421:9 | Dr 332:4 | 490:20 491:2 |
| 532:20,22 | 382:2 459:12 | 426:3 429:12 | 360:19 | 491:3 496:1 |
| 591:18 593:6 | 459:13,17 | 437:1 439:4 | 396:10,17,20 | 496:18 497:6 |
| Doe 487:16 | 475:21,22 | 443:17 | 397:7 449:13 | 497:7 502:18 |

| | | | | |
|--------------|--------------|----------------|-----------------|--------------|
| 503:9,11,11 | 420:14,17 | 596:11,21 | 329:1 330:1 | 463:12 |
| 503:12 | 422:15 423:2 | 600:1,8 | 330:1 596:15 | 484:13 |
| 507:20 | 439:6 442:12 | 601:14 | EAC 559:21 | 562:17 597:5 |
| 509:20,22 | 442:21 | 603:11 604:3 | 563:11 | economies |
| 510:3,18 | 445:16 | 604:20 605:7 | each 335:22 | 623:12 |
| 511:15 512:9 | 446:10 | 609:10,18 | 336:4 354:1 | economist |
| 532:7 536:6 | 447:14 448:6 | 611:22 614:6 | 354:5 356:9 | 337:20 |
| 538:20 541:9 | 448:12 451:1 | 617:13,14 | 356:15 | 339:16 397:9 |
| 542:21 | 451:9 453:20 | 620:10 625:4 | 357:19,22 | 413:19 599:4 |
| 545:13 | 457:16,18,20 | 625:5 | 373:21 | economists |
| 549:10 | 465:2,7 | drugstore | 390:19 | 347:17 401:4 |
| 553:19,20 | 466:14 | 602:2 | 438:13 464:6 | Edwards |
| 554:10,13 | 488:14 | drugstores | 471:18 | 322:12 327:4 |
| 555:2,9 | 492:12 495:2 | 606:21 | 473:10 525:9 | 332:2 344:16 |
| 556:3,11,13 | 495:7 500:11 | 607:17 | 541:21 542:4 | 346:21 |
| 557:14,16 | 501:20,21 | due 454:1 | 542:19 608:2 | 351:13 |
| 558:3,7 | 505:2 509:4 | 506:1 | 612:20 619:7 | 357:13 |
| 567:1 575:18 | 510:12 | duly 331:21 | earlier 346:16 | 370:17,20 |
| 575:20 576:6 | 511:18 | 628:10 | 407:17 | 371:5 378:8 |
| 577:8,10,14 | 516:20 | duopolists | early 461:22 | 379:8 388:21 |
| 578:16,22 | 521:22 | 397:16 | earn 387:21 | 389:2 392:1 |
| 579:1,2 | 522:10,19 | during 412:13 | 462:6 | 393:8 396:19 |
| 580:17,20,22 | 523:1 524:9 | 412:14,17 | earned 386:1 | 398:13 399:3 |
| 581:3,15,17 | 526:9 529:6 | 454:14 | 386:14,20,21 | 417:20 418:7 |
| 582:4,13,15 | 529:12,13 | 471:20 486:1 | 387:20,21 | 418:9,10 |
| 583:8 584:1 | 530:1 531:10 | 501:7,9,17,19 | easier 376:21 | 425:10,16,17 |
| 584:20 | 532:12 537:8 | 502:4,5,12,14 | Eckard 391:4 | 427:17 428:9 |
| 586:15 | 537:16,19 | 520:16,20 | econometric | 429:10 440:9 |
| 587:14 588:8 | 538:13 539:6 | 526:11 535:8 | 437:22 | 440:12 |
| 591:8 593:20 | 539:19 540:9 | 538:14 539:6 | econometrici... | 451:22 452:6 |
| 597:7 600:3 | 542:9 544:19 | 556:1 | 336:22 | 455:5 456:1 |
| 604:15 | 546:16,19 | dwise@dpw.... | econometrics | 460:6,9 |
| 605:21 610:6 | 550:4,12,15 | 323:17 | 439:4 | 461:6 467:9 |
| 621:2 624:14 | 550:22 | Dyckman | economic | 467:11 |
| 625:1,21 | 551:13,16 | 329:9 531:7 | 337:15 340:2 | 468:10 487:1 |
| drugs 329:8 | 554:15 | 533:2,5,9 | 340:13 401:5 | 498:4,8,17 |
| 349:19 | 555:11 559:3 | 534:4 535:12 | 412:22 414:9 | 501:3 507:15 |
| 354:12,14 | 560:3 581:7 | 536:18 | 439:14 | 514:5,10 |
| 355:9,10,12 | 581:9 582:6 | 546:11,16,20 | 441:19 442:6 | 525:1,7 |
| 355:13,17,22 | 583:3,17 | 547:13 | 442:16 | 529:4 533:10 |
| 356:21 357:2 | 584:3,4,5,17 | 548:13 | 480:20 | 533:13,16 |
| 365:3 377:13 | 590:6 592:7 | | economics | 542:17 546:9 |
| 384:8 386:3 | 593:16 594:1 | E | 336:17 | 546:13 547:2 |
| 392:5,19 | 594:3,9,16 | E 321:10 327:1 | 435:13 | 547:17 557:8 |
| 395:5 411:7 | 595:17 596:4 | 327:8 328:1 | 460:18 | 561:15 |